

STATE OF MICHIGAN
COURT OF APPEALS

In re JEANICE L. SPEAR REVOCABLE TRUST.

KEITH SPEAR and JOY SIMMONS,

Petitioners-Appellees,

and

JAN MERILLAT,

Appellant,

v

DOYCE HUMPHREY, Former Trustee,

Respondent-Appellee,

and

FRANK C. RILEY, Successor Trustee,

Appellee.

UNPUBLISHED

May 29, 2014

No. 313682

Lenawee Probate Court

LC No. 11-047683-TV

Before: CAVANAGH, P.J., and OWENS and M. J. KELLY, JJ.

PER CURIAM.

Trust beneficiary Jan Merillat appeals from an order of the probate court removing successor trustee, Doyce Humphrey, awarding Humphrey \$23,000 for his services, and appointing Frank C. Riley as successor trustee of the Jeanice L. Spear Revocable Trust. We affirm.

Settlor Jeanice L. Spear passed away in 2011 and her trust is the Jeanice L. Spear Revocable Trust. Her three adult children, Jan Merillat, Keith Spear, and Joy Simmons, are the beneficiaries under her trust, and her brother, Doyce Humphrey, was named the successor trustee. The trust assets purportedly included undivided one-half interests in several pieces of real property; the other one-half interests were assets in her husband's trust, the Curtis L. Spear

Revocable Trust. He predeceased his wife. The beneficiaries under the Curtis L. Spear Revocable Trust are the same, their three adult children, but Mary Paduan was named the successor trustee.

In December 2011, trust beneficiaries Keith Spears and Joy Simmons (petitioners) filed a petition seeking the formal administration of their parents' trusts. Petitioners claimed that the terms of the trusts created legal conflicts that required the court's intervention. In particular, they alleged, there were disputes regarding: (1) the proceeds from the sale of farmland located in Lenawee County; (2) the proceeds from the sale of real property in Florida; and (3) the fact that one trust beneficiary, Jan Merillat, was given exclusive use of a condominium by trustee Humphrey without the approval of trustee Paduan.

In May 2012, petitioners filed a petition seeking removal of both trustee Humphrey and trustee Paduan. Petitioners argued that they had requested an inventory from each of the trustees, as well as answers to interrogatories. Trustee Paduan did not answer the interrogatories and trustee Humphrey's answers to the interrogatories were incomplete, but indicated that he had written himself three checks from the trust in the amounts of \$29,201.61, \$17,625.61, and \$1,620.30. It also appeared that trustee Humphrey had conveyed by deed the trust's one-half interest in the condominium to trust beneficiary Jan Merillat. Petitioners requested that both trustees be removed, that trustee Humphrey return to the trust all funds he paid himself, and that both trustees be directed to provide a detailed accounting and inventory of trust assets, as well as complete answers to the interrogatories.

The trustees responded to the petition, asserting that trustee Paduan was "not an active trustee" because all of the assets from the Curtis L. Spear Revocable Trust were to be transferred to the Jeanice L. Spear Revocable Trust when Curtis died. Because Jeanice survived Curtis, the directives set forth in her trust should prevail. Further, the only remaining asset was a trust account. The Florida property was sold while settlor Jeanice was alive and the condominium was given to Jan Merillat in accordance with the trust directive. Accordingly, the trustees requested that the petition be denied, that trustee Humphrey be permitted to keep his fees disbursed from the Jeanice L. Spear Revocable Trust, and that the final distributions be made without the appointment of a new successor trustee.

In July 2012, the probate court entered an order (1) removing trustee Paduan and appointing Frank C. Riley as successor trustee of the Curtis L. Spear Trust, and (2) directing trustee Humphrey to provide additional discovery materials, including an itemized statement of his trustee fees and all 2011 bank statements for Jeanice's personal accounts. In September, trust beneficiary Jan Merillat's attorney filed an appearance on her behalf.

In October 2012, the probate court entered an order (1) scheduling an evidentiary hearing for the purpose of receiving testimony from Humphrey regarding his trustee fees, (2) directing both trustees to prepare inventories of the trusts, and (3) directing that appraisals be conducted on the condominium given to Jan Merillat, as well as on a parcel of real estate given to Joy Simmons in 1987.

On November 1, 2012, a two-day evidentiary hearing began. At its conclusion, the probate court awarded trustee Humphrey \$23,000 for his services and directed him to return the money he received in excess of that award to the trust. The court also removed Humphrey as trustee of the Jeanice L. Spear Revocable Trust and appointed Frank C. Riley as successor trustee. This appeal by trust beneficiary Jan Merillat followed.

Trust beneficiary Jan Merillat argues that the probate court abused its discretion when it awarded trustee Humphrey only \$23,000 for his services and removed him as trustee of the Jeanice L. Spear Revocable Trust. We conclude that trust beneficiary Jan Merillat does not have standing to appeal these decisions.

To have appellate standing, the party filing the appeal must be an “aggrieved party” under MCR 7.203(A) and Michigan case law. *Federated Ins Co v Oakland Co Rd Comm*, 475 Mich 286, 291; 715 NW2d 846 (2006). “To be aggrieved, one must have some interest of a pecuniary nature in the outcome of the case, and not a mere possibility arising from some unknown and future contingency.” *Id.*, quoting *In re Trankla’s Estate*, 321 Mich 478, 482; 32 NW2d 715 (1948). Further, the litigant seeking to appeal “must have suffered a concrete and particularized injury” and such injury must arise from either the trial court’s actions or an appellate court judgment. *Federated Ins Co*, 475 Mich at 291-292. In *Ford Motor Co v Jackson (On Rehearing)*, 399 Mich 213, 226; 249 NW2d 29 (1976), our Supreme Court, quoting 4 Am Jur 2d, Appeal and Error, §§ 182 and 184, also explained: “A party who could not benefit from a change in the judgment has no appealable interest” and “one may not appeal from a judgment, order or decree in his favor by which he is not injuriously affected.”

In this case, the probate court held that trustee Humphrey was entitled to \$23,000 in fees for his services; thus, the court ordered him to return to the trust over \$25,000 that he had paid himself from the assets of the Jeanice L. Spear Revocable Trust. Clearly, trust beneficiary Jan Merillat did not suffer “a concrete and particularized injury” from this probate court action. To the contrary, she benefited from the probate court’s order. Further, trust beneficiary Jan Merillat did not suffer “a concrete and particularized injury” from the probate court’s removal of Humphrey as successor trustee of the Jeanice L. Spear Revocable Trust. Because she would not benefit from a change in the judgment regarding either Humphrey’s removal as trustee or the amount awarded for his services, trust beneficiary Jan Merillat has no standing to appeal these decisions.

Trust beneficiary Jan Merillat also argues that the probate court abused its discretion when it appointed Frank C. Riley as successor trustee of the Jeanice L. Spear Revocable Trust because Riley is also the successor trustee of the Curtis L. Spear Trust. Merillat has standing to challenge the probate court’s decision to appoint Riley because she is a beneficiary under both trusts and contends that the appointment will harm her interests. See *Federated Ins Co*, 475 Mich at 291-292. And we review the decision involving the appointment of a successor trustee for an abuse of discretion, i.e., a decision outside the range of reasonable and principled outcomes. *In re Duane v Baldwin Trust*, 274 Mich App 387, 396-397; 733 NW2d 419 (2007). But Merillat has not established that the probate court abused its discretion by appointing Riley as successor trustee of the Jeanice L. Spear Revocable Trust.

Trust beneficiary Jan Merillat briefly argues that a conflict of interest exists because Riley is the successor trustee of both of her parents' trusts and "property ownership issues that are directly adverse in the Curtis L. Spear Trust and Jeanice L. Spear Revocable Trust" must be resolved. These alleged issues, however, were not specifically set forth in Merillat's brief on appeal. But according to successor trustee Riley's brief on appeal, "[u]nder the Curtis L. Spear Trust[,] adjustments in the distributions must be made to equalize the distributions based on the distributions from the Jeanice L. Spear Trust." In appointing Riley as successor trustee of the Jeanice L. Spear Revocable Trust, the probate court held that Riley was familiar with all of the property in both trusts and with the issues that needed to be resolved; therefore, the proper distribution of trust assets could be timely accomplished. Trust beneficiary Jan Merillat has failed to establish that the probate court abused its discretion by appointing Riley as successor trustee of the Jeanice L. Spear Revocable Trust.

Affirmed.

/s/ Mark J. Cavanagh

/s/ Donald S. Owens

/s/ Michael J. Kelly